



New Jersey Hospice Legal and Policy FAQ

Frequently asked questions on medical aid in dying and hospice compliance

1. May hospice attending physicians serve as a prescriber for medical aid in dying in compliance with federal and state law?

YES. Hospice attending physicians may serve as prescribers for medical aid in dying in compliance with New Jersey law, provided they meet the requirements as a physician licensed pursuant to Title 45 of the Revised Statutes who has primary responsibility for the treatment and care of a qualified terminally ill patient and treatment of the patient's illness, disease, or condition. N.J.S.A. 26:16-3.

2. May a hospice attending physician serve as the consulting physician in medical aid in dying?

YES. A hospice attending physician may serve as a consulting physician in medical aid in dying under New Jersey law, provided they meet the requirements of a consulting physician. New Jersey law requires that a consulting physician be a physician licensed pursuant to Title 45 of the Revised Statutes who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient's illness, disease, or condition. N.J.S.A. 26:16-3.

3. May a hospice attending physician take custody of aid in dying medication from the pharmacy on behalf of the patient?

No. Pursuant to chain of custody requirements for controlled substances under the Federal Drug Enforcement Administration (DEA), prescribers may not take custody of the aid in dying medication at any time and doing so may expose them to severe civil and even criminal penalties. Although certain state laws may reference prescribing physicians taking custody of the aid in dying medications from the pharmacy, federal DEA regulations preempt any contrary state laws. The DEA has a strict system for tracking the chain of custody of controlled substances between registered entities, and generally prohibits the distribution of controlled substances from one Practitioner to another outside of a few specific circumstances. The DEA's tracking system does not track controlled substances once dispensed to a patient or patient representative. Also, note that the Controlled Substances Act and regulations are clear that Practitioners may not dispose of controlled substances without a specific registration to expressly allow it so neither the pharmacy nor any of the Prescribers should ever be in the chain of custody for unused medications.



4. May a hospice involuntarily discharge a patient for seeking information about medical aid in dying or seeking a prescription for medical aid in dying?

No. Under New Jersey Administrative Code 8:42C-5.1, patients in hospice programs have the right to be informed of available treatment options. Discharging a patient for seeking information about medical aid in dying could violate these rights. Additionally, New Jersey's Hospice Licensing Standards assert that hospices shall adhere to applicable federal rules, regulations, and requirements, which means hospices cannot involuntarily discharge a patient for seeking or asking for information about medical aid in dying. See N.J.A.C. 8:42C-3.1(h); 42 CFR 418.26.

5. Must a hospice prohibit its clinical staff from pronouncing death, certifying the cause of death, or signing a death certificate for a participant who utilizes medical aid in dying?

No. Nothing in Medicare hospice regulations or the Assisted Suicide Funding Restriction Act requires hospices to prohibit clinical staff from pronouncing death, certifying the cause of death, or signing a death certificate for a participant who utilizes medical aid in dying. Further, doing so may be required under applicable state hospice regulations.

6. May hospice employees be physically present in the patient's room at the point of ingestion in compliance with federal and state law?

YES. New Jersey's statutes on medical aid in dying do not require hospice programs to prohibit hospice employees from being present at time of ingestion of medical aid in dying medication. N.J.S.A. 26:16-3.

7. May hospice employees assist in preparing the aid in dying medication in compliance with federal and state law?

Yes. Pursuant to Section 17, a person acting in good faith and in substantial compliance with the provisions of the Medical Aid in Dying for the Terminally Ill Act is protected from civil, criminal, or professional disciplinary action for participating in, or refusing to participate in, a qualified terminally ill patient's request for medication to end their life. N.J.S.A. 26:16-17(a)(2).

8. Are hospice programs required to report medical aid in dying as suicide under elder abuse statutes?

No. Any action taken in accordance with the provisions of P.L.2019, c. 59 (C.26:16-1 et al.) shall not constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under any law of this State. N.J.S.A. 26:16-17(a)(2).



9. Are hospice programs required to refer patients who ask about medical aid in dying for a psychiatric evaluation?

No. The attending physician shall refer the patient to a mental health care professional, if appropriate, pursuant to section 8 of P.L.2019, c.59 (C.26:16-8). N.J.S.A. 26:16.

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